

SCHLACTER & ASSOCIATES
Attorneys for Plaintiff
450 Seventh Avenue
New York, New York 10123
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By: JED R. SCHLACTER (JRS-4874)

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

<hr/>		
CAMERON INDUSTRIES, INC.,	:	06 Civ. 1999 (JONES)
Plaintiff,	:	
-against-	:	<u>COMPLAINT</u>
MOTHERS WORK, INC. a/k/a	:	
MOTHERHOOD MATERNITY,	:	
Defendant.	:	
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Plaintiff, by its attorneys, SCHLACTER & ASSOCIATES, for its complaint against defendants, alleges:

JURISDICTION

1. This action, as more fully stated below, is for, inter alia, copyright infringement, unfair trade practices and unfair competition; arises under Title 17 of the United States Code;

jurisdiction is vested in this Court under 28 U.S.C. Sections 1338(a) and 1338(b); and proper venue exists under 28 U.S.C. Sections 1400(a) and 1391.

THE PARTIES

2. Plaintiff, CAMERON INDUSTRIES, INC. (hereinafter referred to as "Cameron") is a domestic corporation duly organized and existing under the laws of the State of New York, with an office located at 1375 Broadway, New York, NY 10018. Plaintiff is a textile converter, selling finished textile piece goods to, among others, garment manufacturers.

3. Upon information and belief, defendant MOTHERS WORK, INC. (hereinafter referred to as "MW") is a foreign corporation with offices at 1309 Noble Street, Philadelphia, PA 19123. Said defendant is a retail chain of stores, and sells wearing apparel.

PLAINTIFF'S COPYRIGHTED WORK

4. In 2004 an original work of art was created by Form Studio s.r.l. ("Form"), and identified as "BR 400432".

5. On or about December 14, 2004, Form transferred and assigned, for valuable consideration, any and all of Form's worldwide rights, title and interest in the design called BR 400432, to the plaintiff herein, including but not limited to the copyright thereto and any and all causes of action for prior, present and/or future infringements of such copyright. Thereafter, plaintiff created a fabric design repeat utilizing the design BR 400432, and identified this new design as "Pattern No. 22797".

6. Since on or about May 7, 2005, plaintiff's Pattern No. 22797 was produced on fabrics, which fabrics are also identified as Pattern No. 22797.

7. The design of Pattern No. 22797 is wholly original and is copyrightable subject matter under the laws of the United States.

8. In or about May 7, 2005, plaintiff began selling fabrics bearing the design known as Pattern No. 22797.

9. All of the provisions of Title 17 of the United States Code, and all of the laws governing Copyright, have been duly complied with; and a Certificate of Registration has been duly

received from the Register of Copyrights, covering the design known as Pattern No. 22797, identified as follows: Registration No. VA 1-339-483.

10. Plaintiff is the sole proprietor of all rights, title and interest in and to the Copyright of said design.

11. A photocopy of plaintiff's Certificate of Registration for said copyrighted design is annexed hereto as Exhibit "A".

12. Subsequent to the publication by plaintiff of its Pattern No. 22797 involved herein, defendant, with full knowledge of the rights of plaintiff therein, infringed plaintiff's Copyright on such design by reproducing, displaying, manufacturing, printing, reprinting, yarn-dyeing, publishing, vending, distributing, selling, promoting and/or advertising garments bearing a design thereon which contained substantial material copied from said copyrighted fabric design or by causing and/or participating in such reproduction by reproducing, displaying, manufacturing, printing, reprinting, yarn-dyeing, publishing, vending, distributing, selling, promoting and/or advertising, all in violation of the rights of plaintiff under Section 106 of the Copyright Law, Title 17 U.S.C.

13. A photocopy of plaintiff's copyrighted design known as Pattern No. 22797 is annexed hereto as Exhibit "B", and a photocopy of defendant's said infringement is annexed hereto as Exhibit "C".

14. All of defendant's acts, as set forth herein, were performed without the permission, license or consent of plaintiff.

15. Plaintiff has gone to great expense in producing and promoting the sale of fabrics bearing its copyrighted design Pattern No. 22797.

16. Plaintiff's copyrighted design incorporated carefully prepared and fashionable color combinations, which color combinations aided greatly in the sale of garments bearing the copyrighted design.

17. As a result of plaintiff's expenditure of money and skill in the promotion for sale of fabrics bearing plaintiff's copyrighted design, the fabric design and garments have acquired a substantial market value in the trade.

18. Defendant has a design obviously copied from plaintiff's copyrighted design, which copy defendant has been offering and continues to offer for sale. The design printed on defendant's garments is substantially similar to plaintiff's copyrighted design.

19. Defendant's infringing design (Exhibit "C") is unmistakably copied from plaintiff's design (Exhibit "B").

20. Defendant's garments, when viewed by a consumer, would appear to be substantially similar to a garment of like style bearing plaintiff's copyrighted design.

21. Upon information and belief, defendant has produced its garments incorporating the copied design in a color combination virtually identical to a color combination of plaintiff's design.

22. Defendant, by its acts as aforesaid, has taken advantage of the knowledge and skill of plaintiff and of the good will developed by plaintiff and has capitalized upon the market created for plaintiff's design.

23. By defendant's use of a design and color combination virtually identical with plaintiff's design and color combination, defendant has been and will continue to be able to pass off and sell its garments as a substitute for the garments sold by customers of plaintiff.

24. The aforesaid acts of defendant in copying plaintiff's design and color combination and selling copies of same constitutes inequitable conduct, unfair trade practices and unfair competition in that defendant has thereby misappropriated plaintiff's good will and the benefits of plaintiff's knowledge, skill and expenditures in the promotion of the distinctive design and color combination, and by reason of the sale of defendant's garments in competition with the plaintiff's sales of fabrics incorporating the copyrighted design has caused irreparable injury to plaintiff in that plaintiff's market has been greatly reduced thereby, which injury will continue so long as defendant continues to market the copied design.

25. Plaintiff has been damaged by the acts of defendant alleged herein in an amount not as yet known, but believed to be in excess of One Million (\$1,000,000.00) Dollars. The infringing activities of defendant is further and continuously damaging plaintiff in a manner for which plaintiff has no adequate remedy at law.

WHEREFORE, plaintiff demands:

(1) That defendant, its agents, employees and servants be enjoined pendente lite and permanently from infringing the said Copyright No. VA 1-339-483 of plaintiff covering its Pattern No. 22797 in any manner and from publishing, selling, marketing or otherwise disposing of any textiles and garments imprinted with a design copied from plaintiff's said copyrighted design.

(2) That defendant be required to pay to plaintiff damages in the amount of One Million (\$1,000,000.00) Dollars, plus interest, which plaintiff has sustained in consequence of defendant's infringement of said Copyright and said unfair trade practices and unfair competition and to account for:

(a) all gains, profits and advantages derived by defendant in its infringement of plaintiff's Copyright or such damages as to the Court shall appear proper within the provisions of the copyright statutes, and

(b) all gains, profits and advantages derived by defendant by said unfair practices and unfair competition.

(3) That defendant be required to deliver up to be impounded during the pendency of this action, all copies of said reproduction of said work of art in its possession or under its control, and to deliver up for destruction all infringing copies and rollers, screens, plates, molds, and other matter for making such infringing copies.

(4) That defendant pay to plaintiff the costs of this action and reasonable attorneys' fees to be allowed to the plaintiff by the Court.

(5) That plaintiff have such other and further relief as is just.

Dated: New York, New York
March 8, 2006

SCHLACTER & ASSOCIATES
Attorneys for Plaintiff

By 

JED R. SCHLACTER (JRS-4874)
450 Seventh Avenue
New York, NY 10123
(212) 695-2000

Certificate of Registration



This Certificate issued under the seal of the Copyright Office in accordance with title 17, United States Code, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

Marybeth Peters

Register of Copyrights, United States of America

FORM VA For a Work of the Visual Arts UNITED STATES COPYRIGHT OFFICE

R

VA 1-339-483



EFFECTIVE DATE OF REGISTRATION

FEB 16 2006

Month

Day

Year

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE USE A SEPARATE CONTINUATION SHEET

1

TITLE OF THIS WORK ▼

Pattern No 22797

NATURE OF THIS WORK ▼ See instructions

Design for Fabric

PREVIOUS OR ALTERNATIVE TITLES ▼

PUBLICATION AS A CONTRIBUTION If this work was published as a contribution to a periodical, serial, or collection, give information about the collective work in which the contribution appeared. Title of Collective Work ▼

If published in a periodical or serial give Volume ▼

Number ▼

Issue Date ▼

On Pages ▼

2

NAME OF AUTHOR ▼

Form Studio s r l

DATES OF BIRTH AND DEATH

Year Born ▼

Year Died ▼

Was this contribution to the work a work made for hire? ☒ Yes ☐ No

AUTHOR'S NATIONALITY OR DOMICILE Name of Country

Italy

OR Citizen of ☐ Domiciled in ☐

WAS THIS AUTHOR'S CONTRIBUTION TO THE WORK

Anonymous? ☐ Yes ☒ No

Pseudonymous? ☐ Yes ☒ No

If the answer to either of these questions is "Yes" see detailed instructions

NOTE

Under the law the author of a work made for hire is generally the employer not the employee (see instructions). For any part of this work that was made for hire check "Yes" in the space provided give the employer (or other person for whom the work was prepared) as Author of that part and leave the space for dates of birth and death blank.

NATURE OF AUTHORSHIP Check appropriate box(es) See instructions

☐ 3-Dimensional sculpture

☐ Map

☐ Technical drawing

☒ 2-Dimensional artwork

☐ Photograph

☐ Text

☐ Reproduction of work of art

☐ Jewelry design

☐ Architectural work

☐ Design on sheetlike material

NAME OF AUTHOR ▼

DATES OF BIRTH AND DEATH

Year Born ▼

Year Died ▼

Was this contribution to the work a work made for hire? ☐ Yes ☐ No

AUTHOR'S NATIONALITY OR DOMICILE Name of Country

OR Citizen of ☐ Domiciled in ☐

WAS THIS AUTHOR'S CONTRIBUTION TO THE WORK

Anonymous? ☐ Yes ☐ No

Pseudonymous? ☐ Yes ☐ No

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☐ 3-Dimensional sculpture

☐ Map

☐ Technical drawing

☐ 2-Dimensional artwork

☐ Photograph

☐ Text

☐ Reproduction of work of art

☐ Jewelry design

☐ Architectural work

☐ Design on sheetlike material

3

YEAR IN WHICH CREATION OF THIS WORK WAS COMPLETED

2004 This information must be given in all cases.

DATE AND NATION OF FIRST PUBLICATION OF THIS PARTICULAR WORK

Month May Day 7 Year 2005
USA Complete this information ONLY if this work has been published

4

COPYRIGHT CLAIMANT(S) Name and address must be given even if the claimant is the same as the author given in space 2. ▼

Cameron Industries, Inc
1375 Broadway, New York, NY 10018

APPLICATION RECEIVED

FEB 16 2006

ONE DEPOSIT RECEIVED

FEB 16 2006

TWO DEPOSITS RECEIVED

FUNDS RECEIVED

TRANSFER If the claimant(s) named here in space 4 is (are) different from the author(s) named in space 2, give a brief statement of how the claimant(s) obtained ownership of the copyright. ▼

Assignment

EXAMINED BY

FORM VA

CHECKED BY

☐ CORRESPONDENCE

Yes

FOR
COPYRIGHT
OFFICE
USE
ONLY

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE USE A SEPARATE CONTINUATION SHEET

PREVIOUS REGISTRATION Has registration for this work, or for an earlier version of this work, already been made in the Copyright Office?☐ Yes ☒ No If your answer is "Yes," why is another registration being sought? (Check appropriate box.) ▼a. ☐ This is the first published edition of a work previously registered in unpublished formb. ☐ This is the first application submitted by this author as copyright claimant.c. ☐ This is a changed version of the work, as shown by space 6 on this application

If your answer is "Yes," give Previous Registration Number ▼

Year of Registration ▼

DERIVATIVE WORK OR COMPILATION Complete both space 6a and 6b for a derivative work; complete only 6b for a compilationa. **Preexisting Material** Identify any preexisting work or works that this work is based on or incorporates ▼a
See instructions
before completing
this spaceb. **Material Added to This Work** Give a brief general statement of the material that has been added to this work and in which copyright is claimed ▼**DEPOSIT ACCOUNT** If the registration fee is to be charged to a Deposit Account established in the Copyright Office, give name and number of Account.
Name ▼ Account Number ▼**CORRESPONDENCE** Give name and address to which correspondence about this application should be sent. Name/Address/Apt/City/State/ZIP ▼

Jed R. Schlacter, Esq.

Schlacter & Associates

450 Seventh Avenue

New York, NY 10123

Area code and daytime telephone number ▶ 212 695-2000

Fax number ▶ 212 629-5825

CERTIFICATION* I the undersigned hereby certify that I am the

check only one ▶

☐ author☐ other copyright claimant☐ owner of exclusive right(s)☐ authorized agent of

Cameron Industries, Inc.

Name of author or other copyright claimant, or owner of exclusive right(s) ▲

of the work identified in this application and that the statements made by me in this application are correct to the best of my knowledge

Typed or printed name and date ▼ If this application gives a date of publication in space 3, do not sign and submit it before that date

Jed R. Schlacter

Date ▶

2/8/06

Handwritten signature (X) ▼

Mail
certificate
toCertificate
will be
mailed in
window
envelope

Name ▼

Schlacter & Associates

Number/Street/Apt. ▼

450 Seventh Avenue

City/State/ZIP ▼

New York, NY 10123

Complete all necessary spaces
Begin your application in space B1. Application form
2. Nonrefundable \$20 filing fee
in check or money order
payable to Register of Copyrights
3. Deposit materialRegister of Copyrights, Library of Congress
101 Independence Ave. S.E.
Washington D.C. 20559-8000



